

## MINUTES OF THE COMMISSION MEETING

Chairman Dustin Johnson called the meeting to order. Present were: Vice Chairman Gary Hanson; Commissioner Steve Kolbeck; Executive Director Patty Van Gerpen; Deputy Executive Director Heather Forney; Commission Advisor Greg Rislov; Commission Attorneys John Smith and Rolayne Wiest; Staff Attorneys Karen Cremer and Kara Semmler; Staff Analysts Harlan Best, Bob Knadle, Martin Bettmann, Nathan Solem, Keith Senger, Dave Jacobson, and Jim Mehlhaff; Consumer Affairs Supervisor Deb Gregg; and Administrative Secretary Demaris Axthelm.

Also present were: Brett Koenecke, May, Adam, Gerdes and Thompson, representing NorthWestern Energy and TransCanada Keystone Pipeline, LP; Jeff Decker, NorthWestern Energy; Dave Gerdes, May, Adam, Gerdes and Thompson, representing NorthWestern Energy; Bill Van Camp, Olinger, Lovald, McCahren & Reimers, representing EchoStar Satellite; Bob Miller, South Dakota Electric Utility Companies and RaeAnn Kelsch, Alltel Corporation.

Joining the meeting by telephone were: Dave Ross, Otter Tail Power Company; Jean Calligan and Marv Sorensen, MidAmerican Energy Company; Tamie Aberle, Montana-Dakota Utilities; Roy Wise, Richardson, Wyly, Wise, Sauck and Hieb, representing Lemke Digging and Geo Thermo Drilling; Paul Linde, Schaffer Law Firm, representing Bailey's Plumbing; Richard Helsper, Glover & Helsper, representing Brookings Municipal Utilities d/b/a Swiftel Communications; Jim Adkins, Brookings Municipal Utilities d/b/a Swiftel Communications; Lynn Ratnavale and David Lafuria, Lukas, Nace, Gutierrez and Sachs, representing Brookings Municipal Utilities d/b/a Swiftel Corporation; Jason Topp, Larry Toll and Colleen Sevdol, Qwest Corporation; Suzie Rao, Alltel; Denise Hargan, EchoStar Satellite LLC; and Curt Hohn, WEB Water.

### Administration

1. **Approval of the Minutes of the Commission Meetings Held on May 22 and June 26, 2007, and the Ad Hoc Meeting Held on August 14, 2007. (Staff: Demaris Axthelm)**

Commissioner Kolbeck moved to approve the Commission Minutes of May 22, 2007 and June 26, 2007 and the Ad Hoc Minutes of August 14, 2007. Motion passed 3-0.

### Consumer Reports

1. **Status Report on Consumer Utility Inquiries and Complaints Received by the Commission. (Consumer Affairs: Deb Gregg)**

Ms. Deb Gregg reported that the Commission had received a total of 123 contacts since the last report was prepared for the August 7, 2007, Commission meeting. 11 contacts involved telecommunications services; 18 contacts involved electricity issues; 11 contacts involved natural gas issues; 17 contacts involved cellular phone issues; 36 contacts involved the Do Not Call Registry; and 20 contacts involved issues not regulated by the Public Utilities Commission. In 2007, 1,390 of the 1,605 complaints registered have been resolved informally. In 2006, 2,270 of the 2,466 complaints registered have been resolved informally.

- 1. EL07-023 In the Matter of the Filing by Otter Tail Power Company for Approval of Tariff Revisions. (Staff Analyst: Keith Senger, Staff Attorney: Karen Cremer)**

Mr. Dave Ross, Otter Tail Power Company (OTP), stated that OTP is asking for approval to remove all 7 existing contracts with deviations. Mr. Ross further stated that the new agreements do not contain any deviations from OTP's currently filed tariff and all communities have been notified. Mr. Keith Senger stated that the cities of Summit, Grenville, Corona, Strandburg, Ortle, Stockholm and Twin Brooks' existing contracts with deviations expired June 1, 2007. Mr. Senger further stated that OTP is converting expired contracts with deviations to the tariff rates as contracts expire, and therefore, staff recommended that the Commission approve the Tariff revisions.

**Vice Chairman Hanson moved to approve the tariff revisions in Docket EL07-023. Motion passed 3-0.**

- 2. EL07-024 In the Matter of the Filing by the City of White for Approval of its Revised Service Territory as a Result of Annexation. (Staff Analyst: Nathan Solem, Staff Attorney: Kara Semmler)**

Mr. Dave Gerdes, representing Otter Tail Power Company (OTP), stated that due to a miscommunication the petition filed by the City of White should not have been docketed. Mr. Gerdes requested that intervention be granted to OTP to enable it to move to dismiss. Ms. Kara Semmler stated that there is a statutory time frame for negotiations and staff agrees with OTP to dismiss the motion and that the City of White joined in the motion to dismiss.

**Chairman Johnson moved to grant intervention to Otter Tail Power Company in Docket EL07-024. Motion passed 3-0.**

**Chairman Johnson moved to grant the joint motion to dismiss and close Docket EL07-024. Motion passed 3-0.**

### **Grain Dealer**

- 1. GD07-001 In the Matter of LW Sales/LW Seed's Failure to Obtain Necessary Licensure Prior to Operation as a Grain Dealer in the State of South Dakota. (Staff Analyst: Jim Mehlhaff, Staff Attorney: Kara Semmler)**

Ms. Kara Semmler stated that there are no issues of fact and asked the Commission to decide on several issues of law and grant staff's motion for summary judgment. Ms. Heather Forney stated that she confirmed with Ms. Anissa Grambihler from staff that an Agenda was e-mailed and a hard copy was also mailed to Ms. Kari A. Bartling, Attorney for LW Sales Inc. Neither Ms. Bartling nor LW Sales/LW Seed appeared.

**Chairman Johnson moved to grant staff's motion for summary judgment. Motion passed 3-0.**

**Chairman Johnson moved to fine LW Sales Inc. \$400.00 and ordered it to stop selling grain, including sales into the mushroom industry, without a grain dealer's license. Motion passed 3-0.**

- 1. HP07-001 In the Matter of the Application of TransCanada Keystone Pipeline, LP for a Permit under the South Dakota Energy Conversion and Transmission Facility Act to Construct the Keystone Pipeline Project. (Staff Analysts: Martin Bettmann/Bob Knadle/Nathan Solem, Staff Attorney: Kara Semmler)**

Chairman Johnson stated that the Commission did release the larger land owners' list and the Commission did find that the landowner names, addresses and property descriptions related to South Dakota properties contained on the Land List were not entitled to confidential treatment pursuant to ARSD 20:10:01:39 and 20:10:01:42, but that it was not appropriate to post this information on the Commission's public web site. Chairman Johnson further stated that telephone numbers, including cell phone numbers contained on the Land List were entitled to confidential treatment and that decisions regarding access to information concerning landowners of non-South Dakota lands should be made by the states having jurisdiction over such lands. Mr. Curt Hohn stated that he is asking that TransCanada's Line list be released in case the Land owners' list that was earlier released would not cover if any changes would be made. Mr. Brett Koenecke stated that TransCanada is still resisting releasing to the public the pump station line list. Mr. Koenecke further stated the specific route for the pipeline is clearly detailed on the maps that are filed with the Commission and filed with county auditors along the pipeline route and if there would be modifications to the pipeline route it will be discussed with the Commission and Intervenors. Ms. Kara Semmler explained to the Commission that the Line list pertains to pump stations and does not list landowners along the pipeline. Therefore, Ms. Semmler recommended that the Line list be release with the conditions that all telephone numbers are redacted and all information concerning owners of non-South Dakota properties be redacted.

**Chairman Johnson moved that the Applicant's Line List shall be released to persons upon request but not be published on the Commission's public web site, with telephone numbers redacted and all information concerning owners of non-South Dakota properties redacted. Motion passed 3-0.**

### **Natural Gas**

- 1. NG07-014 In the Matter of the Filing by MidAmerican Energy Company for Approval of Tariff Revisions Extending the Monthly Metered Transportation Gas Pilot Projects. (Staff Analyst: Dave Jacobson, Staff Attorney: Karen Cremer)**

Ms. Jean Calligan, representing MidAmerican Energy Company (MidAmerican) stated that MidAmerican filed for approval of its revised tariff sheets that would extend the existing monthly metered transportation gas pilot project and the interruptible monthly metered transportation gas pilot project through April 30, 2008. Ms. Calligan further stated that these gas pilot projects are set to expire August 31, 2007, and also stated that MidAmerican would like to have the same time lines in both Iowa and South Dakota. Mr. Dave Jacobson of Staff recommended approval of the tariff revisions.

**Commissioner Kolbeck moved to approve the tariff revisions in Docket NG07-014. Motion passed 3-0.**

- 2. NG07-016 In the Matter of the Filing by Montana-Dakota Utilities Co. for Approval of Tariff Revisions. (Staff Analyst: Dave Jacobson, Staff Attorney: Kara Semmler)**

Mr. James Leach, Montana Dakota Utilities (MDU), stated that MDU filed for approval revised tariff sheets to change the date of the annual Surcharge Adjustment filing required under its purchased gas cost adjustment rate 88 and East River purchased gas cost adjustment rate 89 from May 1 each year to October 1 each year. The change is requested in order to better match the effects of the withdrawals of gas from storage with the replacement of that gas within the same annual PGA period. Vice Chairman Hanson questioned how the change would better match the cost of gas charged to customers with gas they actually historically used. Ms. Aberle explained that because of LIFO accounting, a better match is achieved by the proposed changes. Mr. Dave Jacobson recommended that the Commission approve the tariff revisions.

**Chairman Johnson moved to approve the tariff revisions in Docket NG07-016.**  
Motion passed 3-0.

### **Pipeline Safety**

1. **PS07-002 In the Matter of the Filing of the Investigation of the Natural Gas Incident of March 8, 2007, in Mitchell, South Dakota. (Staff Analyst: Martin Bettmann, Staff Attorney: Kara Semmler)**

Ms. Kara Semmler, on behalf of staff, filed a proposed plan to work towards a resolution. Mr. Brett Koenecke, representing NorthWestern Energy, recommended that experts visually inspect the pipes first and then let the experts inform the parties on what particular test to perform.

**Chairman Johnson moved to grant intervention to American Family in Docket PS07-002.** Motion passed 3-0.

**Chairman Johnson moved that after staff has hired an expert, Commission Staff shall convene a conference call to set groundwork for a physical inspection. After the physical inspection, Staff shall convene a meeting to establish a testing protocol. If no party objects to the testing protocol, testing may proceed and Commission authority shall be given regarding the same. If any party raises any objection, the testing protocol must come before the Commission before testing can begin.** Motion passed 3-0.

### **Telecommunications**

1. **TC04-213 In the Matter of the Filing by Brookings Municipal Utilities d/b/a Swiftel Communications for Designation as an Eligible Telecommunications Carrier. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)**

Mr. Richard Helsper stated that Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel) filed a Motion to modify its ETC Designation Order to have its annual compliance filing and its ETC annual certification filings coincide on the date of the annual certification. Ms. Karen Cremer stated that Mr. Helsper is correct, and Staff recommended that the Commission reopen Docket TC04-213 and approve the requested modifications.

**Vice Chairman Hanson moved to reopen Docket TC04-213 and approve the requested modifications.** Motion passed 3-0.

2. **TC06-191 In the Matter of EchoStar Satellite LLC Owning the Trademark Dish Network, Echosphere, LLC's Failure to Register as a Telemarketers and the Solicitations they made to those Registered on the Do Not Call List. (Staff Attorney: Kara Semmler)**

Mr. Bill VanCamp, representing EchoStar Satellite LLC (EchoStar), stated that there has been confusion on who had made the calls and explained to the Commission and staff the difference in EchoStar's registered retailers and agency contracts within EchoStar. Ms. Kara Semmler stated that staff does not believe that the motion for summary judgment is appropriate at this time and recommended to the Commission to deny EchoStar's request for summary judgment. Ms. Denise Hargan, EchoStar, explained to the Commission the sting programs that EchoStar had initiated. The Commissioners did not make any motions and will take this under advisement.

**TC07-057      In the Matter of the Application of Midcontinent Communications for Approval to Expand its Certificate of Authority to Provide Local Exchange Service in the Gayville Rural Service Area. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)**

Mr. Dave Gerdes, representing Midcontinent Communications (Midcontinent), stated that Midcontinent filed a petition to amend its certificate of authority to provide local exchange service in the rural exchange area of Gayville. Mr. Harlan Best stated that the request was made according to a competitive response to the provision of video programming in the geographical area by the incumbent carrier, PrairieWave Community Telephone, Inc. Mr. Best further stated that Section 47 U.S.C. 251(f)(1)(C) is applicable to the application and the exemption provided by 47 U.S.C. 251(f) (1) (A) does not apply to PrairieWave. Mr. Best recommended to the Commission to grant the petition to amend the certificate of authority, grant confidential treatment of ARSD20:10:32:03(11) and the waiver of ARSD 20:10:32:15 pursuant to ARSD 20:10:32:18.

**Chairman Johnson moved to approve an amended certificate of authority to Midcontinent to provide competitive local exchange service in the city of Gayville, waive ARSD 20:10:32:15 pursuant to ARSD 20:10:32:18 and grant the confidential treatment of ARSD 20:10:32:03(11). Motion passed 3-0.**

**3.      In the Matter of the Request for Certification Regarding the Use of Federal Universal Service Support in Dockets TC07-059, TC07-065, and TC07-068.**

**TC07-059      In the Matter of the Request of Qwest Corporation for Certification Regarding its Use of Federal Universal Service Support. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)**

Mr. Jason Topp asked the Commission to approve the filing. Mr. Harlan Best stated that Qwest Corporation (Qwest) has filed according to the Commission's administrative rules for the certification of its use of federal universal service support and the company has certified that its support will be used in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254. Qwest's residential rates are below the most recent federal benchmark rate. Staff has reviewed the filing and recommended that the Commission grant the request for certification and issue certification letters to the FCC and the USAC.

**Vice Chairman Hanson moved to certify the use of USF funds and issue certification letters in Docket TC07-059 and to certify that the Company's residential rates in rural areas are reasonably comparable to urban rates nationwide. Motion passed 3-0.**

**TC07-065      In the Matter of the Request of WWC License LLC for Certification Regarding its Use of Federal Universal Service Support. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)**

Mr. Harlan Best, representing WWC License LLC, asked the Commission to approve its filing. Mr. Harlan Best stated that WWC License LLC has filed according to the Commission's administrative rules for the certification of its use of federal universal service support and the company has certified that its support will be used in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254. Staff has reviewed the filing and recommended that the Commission grant the request for certification and issue certification letters to the FCC and the USAC

**Commissioner Kolbeck moved to certify the use of USF funds and issue certification letters in Docket TC07-065. Motion passed 3-0.**

**TC07-068 In the Matter of the Request of Brookings Municipal Telephone d/b/a Swiftel Communications for Certification Regarding its Use of Federal Universal Service Support. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)**

Mr. David LaFuria, representing Swiftel Communications, stated that the company has answered all questions required from the Commission. Mr. Harlan Best stated that Swiftel Communications has filed according to the Commission's administrative rules for the certification of its use of federal universal service support and the company has certified that its support will be used in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254. Staff has reviewed the filing and recommended that the Commission grant the request for certification and issue certification letters to the FCC and the USAC

**Chairman Johnson moved to certify the use of USF funds and issue certification letters in Docket TC07-068 and to certify that the Company's residential rates in rural areas are reasonably comparable to urban rates nationwide. Motion passed 3-0.**

**4. TC07-086 In the Matter of the Filing by Citizens Telecommunications Company of Minnesota, LLC for a Waiver of ARSD 20:10:32:56. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)**

Mr. Harlan Best stated that Citizens Telecommunications Company of Minnesota, LLC (Citizens) represents a small group in South Dakota and therefore, would recommend that the Commission grant the waiver of ARSD 20:10:32:56. Mr. Best also recommended that the Commission grant certification and issue certification letters to the FCC and the USAC.

**Commissioner Kolbeck moved to grant the waiver of ARSD 20:10:32:56 and to certify the use of USF funds and issue certification letters in Docket TC07-086. Motion passed 3-0.**

**6. TC07-087 In the Matter of the Petition of Qwest Corporation for Waiver of Utilization Threshold Requirement in the Sioux Falls Rate Center. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)**

Mr. Larry Toll of Qwest Corporation (Qwest) stated that Qwest is requesting two blocks of 10,000 numbers so its customer Sanford Medical can accommodate for the growth of its business. Mr. Harlan Best stated staff has concerns that not all numbers would be used and this could potentially cause a number shortage. Qwest reassured staff that all numbers would be used. Therefore, Mr. Best recommended that the Commission grant the petition for waiver.

**Commissioner Kolbeck moved to grant the petition for waiver in Docket TC07-087. Motion passed 3-0.**

Ms. Kara Semmler stated that the addendum has been properly filed, has been properly executed and does not appear to contain discriminatory provisions. No comments were filed and staff recommends approval of the addendum.

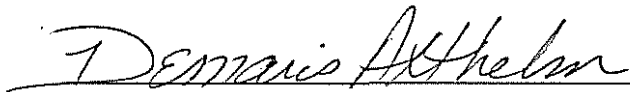
Chairman Johnson moved to approve the addendum to the agreement in Docket TC07-088. Motion passed 3-0.

8. TC07-089 In the Matter of the Filing by Sancom, Inc. d/b/a Mitchell Telecom for Approval of Revisions to its Switched Access Services Tariff. (Staff Analyst: Keith Senger, Staff Attorney: Karen Cremer)

Mr. Keith Senger stated that Sancom had filed minor text corrections to its tariff and therefore staff recommends that the Commission approve the tariff revisions.

Vice Chairman Hanson moved to approve the tariff revisions in TC07-089. Motion passed 3-0.

Meeting adjourned.

  
Demaris Axthelm  
Administrative Secretary